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SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

No. 818

PAUL S. WOOLLEY,
Petitioner,

vs.

EASTERN AIR LINES, INC., a Delaware Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT.

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IN THE

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OCTOBER TERM, 1959.

No. .....

PAUL S. WOOLLEY,
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vs.

EASTERN AIR LINES, INC., a Delaware Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

PAUL S. WOOLLEY petitions the Supreme Court of the United States for a review on certiorari, reviewing the decision of the United States Court of Appeals for the Fifth Circuit in case number 17,870, opinion rendered January 13, 1960, mandate issued February 11, 1960, in which the decision of the United States District Court in and for the Southern District of Florida was affirmed, case reported, 273 F.2d 615, Advance Sheet, February 29, 1960.

The grounds upon which your petitioner seeks to invoke the jurisdiction of the Supreme Court of the United

States are based upon the provisions of Rule 19, sub-section (b), as follows:

1. The United States Court of Appeals, 5th Circuit, has rendered a decision in conflict with the opinion of the United States Supreme Court in *Transcontinental & Western Air, Inc.*, v. *Koppal*, 345 U.S. 653, 73 S. Ct. 906, 97 L. Ed. 1325, and *Slocum* v. *Delaware, L. & W. R. R.*, 339 U.S. 239, 70 S. Ct. 577, 580, 94 L. Ed. 795.

2. The United States Court of Appeals, 5th Circuit, has decided an important question of Federal law which has not been but should be settled by this Court.

3. The United States Court of Appeals, 5th Circuit, has decided a Federal question in a way in conflict with the applicable decisions of this Court.

A copy of the opinion of the United States Court of Appeals, 5th Circuit, is attached hereto as an appendix to this petition for certiorari.

This opinion called for an interpretation of a previous decision by the United States Court of Appeals, 5th Circuit, of *Woolley* v. *Eastern Air Lines et al.*, 250 F.2d 86, petition for certiorari filed in this Court and denied, April 14, 1958 (356 U.S. 931, 78 S. Ct. 773).

A brief background of the litigation is as follows:

For many years prior to 1950, Paul S. Woolley was a captain pilot in the employ of Eastern Air Lines. In the winter of 1950, Eastern Air Lines had suspended Mr. Woolley, contending he had engaged in unsafe flying practice and in certain dissensions with a tower operator at the Detroit Airport.

At that time Captain Woolley as a pilot was represented by the Air Line Pilots Association as a bargaining repre-

sentative. There was a typical contract between Eastern Air Lines, Inc. and the Air Line Pilots Association as a bargaining representative, which provided for certain discipline procedure.

When Captain Woolley was suspended in the winter of 1950, he was represented by the Air Line Pilots Association, who filed a petition to review that suspension, but that petition was never determined, and Captain Woolley was reinstated in July of 1950. As a condition of that lifting of the suspension for reemployment, whatever it may be called, and as a condition for reemployment and not for discharge, Captain Woolley was required to sign an anticipatory letter of resignation, not as a condition, as aforesaid, for severing his employment, but as a condition for his reinstatement as an air line captain with full seniority.

Section 29 of said contract (Tr. 70) provided the procedure and grounds under which a pilot could be disciplined or dismissed, and under the contract the Company was prohibited from disciplining or dismissing a pilot without giving notification in writing and specifying in a written charge the precise charge or charges against him. A part of paragraph 4 of said contract provided (Tr. 71):

> "He shall be given the necessary time in which to prepare and to secure the presence of witnesses and shall have the right to be represented by an employee of the Company of his choice or by his duly accredited representative or representatives."

Provision was made for an appeal to the System Board of Adjustment which was created under the terms of this contract. It provided for the creation of a System Board of Adjustment. The contract is shown beginning Tr. 87, and paragraphs e and f of the contract provide (Tr. 89):

"(e) The Board shall have jurisdiction over disputes between any employee covered by the Pilots Agreement and the Company growing out of grievances or out of interpretation or application of any of the terms of the Pilots Agreement. The jurisdiction of the Board shall not extend to proposed changes in hours of employment, rates of compensation or working conditions covered by existing agreements between the parties hereto.

(f) The Board shall consider any dispute properly submitted to it by the President of the Association or by the Chief Operating Officer of the Company, when such dispute has not been previously settled in accordance with the terms provided for in the Pilots Agreement."

At Tr. 92 there is shown a provision:

"(l) Decisions of the Board in all cases properly referable to it shall be final and binding upon the parties hereto."

Paragraph (n) provides (Tr. 93):

"(n) Nothing herein shall be construed to limit, restrict or abridge the rights or privileges accorded either to the employees or to the employer, or to their duly accredited representatives, under the provisions of the Railway Labor Act, as amended, and the failure to decide a dispute under the procedure established herein shall not, therefore, serve to foreclose any subsequent rights which such law may afford or which may be established by the National Mediation Board by orders issued under law with respect to disputes which are not decided under the procedure established herein."

We ask the Court to note that the only position the Board of Adjustment occupied was to pass on grievances

covered within the terms of the pilots agreement, and that only the decisions of the Board would be binding where those cases had been properly referred to the Board under the terms of the contract.

The terms of the contract nowhere made any provision for special contracts on behalf of any of its members of the Union or any of the employees. The captain pilot did not sign the agreement, but he was represented by the Air Line Pilots Association. The law has been clearly established that the pilot is bound by the terms of that agreement to the extent that all other parties are bound. There is no provision in the contract or recognized in the law, whereby the Company can make any special contracts with its employee. They are all bound by the terms of the bargaining agreement.

Therefore, when Captain Woolley was reinstated in the latter part of July, 1950, he was then protected under the terms of the bargaining agreement then in effect and the one thereafter rewritten or revised in 1954. His special letter where he tendered a resignation in advance to the officers of Eastern Air Lines was contrary to the public policy and was void under the terms of the Railway Act.

Captain Woolley, as reflected by this record, continued as a captain pilot until February, 1956, when the Eastern Air Line operating officer simply directed a letter to Captain Woolley electing to exercise the option to accept his resignation, which was under the letter of July, 1950. He was not discharged for merit, and he was not discharged under any of the discipline provisions of either of the two contracts above mentioned.

When he petitioned the Board through the Air Line Pilots Association, objection was timely made that the resignation in advance of his reemployment was void, and

that the Company had no right to discipline or discharge or dismiss Captain Woolley, unless it was done within the purview of the discipline provisions of the contract. The System Board of Adjustment, contrary to any authority; and because the case was improperly referred to it in the first place, was without power to pass upon the merits of the right to accept the resignation. There was no provision in the contract which gave it, the Adjustment Board, the right to pass upon any condition of the employment which was not in the contract. Mr. Woolley was not discharged for merit or lack of merit. There was no showing that he had violated any of the rules and regulations of the Company, or normal safe flying conditions.

The Adjustment Board specifically did not pass on the merits, or lack of merits, in the discipline proceeding, but simply upheld the so-called right of the Company to accept a 6-year old resignation. These matters are all gone into in the original opinion, *250 F.2d 86*.

Captain Woolley then took his matter to the United States District Court, Southern District of Florida, and the opinion of that Court simply held that it did not have jurisdiction. That suit was not for wrongful discharge, but was simply a request by Woolley to invoke the jurisdiction of the Federal Court to the extent of having a Federal Court order that the System Board of Adjustment reopen the case, require the Company to file charges for dismissal or grounds for discharge, and to have a hearing thereon.

The District Court, nevertheless, after holding that it had no jurisdiction, upheld the actions of the Company and of the Board which had held that the Company had a right to accept the resignation.

An appeal was taken to the United States Court of Appeals, 5th Circuit, in which the issue was squarely pre-

sented to that Court, and in which it was claimed that if the United States District Court had no jurisdiction over the Board, then it had no right to hold that the action of the Board was final. It was contended in the said Court of Appeals that the System Board had no jurisdiction in the matter which was improperly referred to it, and that its opinion was a nullity since there had been no attempt made to pass upon the merits.

Nevertheless, the United States Court of Appeals, 5th Circuit, in the opinion referred to, upheld the District Court and held that the Federal Courts had no right to review the action of that System Board, regardless of whether it had jurisdiction of the subject matter or not.

Petition for certiorari was applied for in this Court, and this Court refused to entertain the petition for certiorari..

Paul S. Woolley, feeling that he had been discharged wrongfully and without any proper charges being filed against him by the Company under the terms of the bargaining agreement, then filed his suit in the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida, for damages for wrongful discharge. This suit was only filed against Eastern Air Lines, Inc., and was not a suit against the Air Line Pilots Association International or any of the members of the Eastern Air Line Pilots Association.

It was contended that the ineffective attempt by Captain Woolley to have the United States Court order a review of the System Board of Adjsutment's action, was not final, that there had never been any court or board of adjustment which had ever passed upon the merits or demerits of his claim, and that he had been wrongfully discharged (Complaint, Tr. 4).

This cause was removed by Eastern Air Lines to the United States District Court, Southern District of Florida, and upon such removal, a motion to dismiss the complaint was filed on the grounds that the entire matter was *res judicata* and had been decided on the merits by the decision of the United States District Court, affirmed in *Woolley* v. *Eastern Air Lines et al.*, 250 F.2d 86. This motion is shown at Tr. 103.

On May 13, 1959 (Tr. 105), the District Court of the United States, Southern District of Florida, entered an order dismissing the complaint, and entered a judgment in favor of the defendant, Eastern Air Lines, Inc., against the plaintiff, Paul S. Woolley.

There still had been no opinion by any court on the merits, nor had Woolley ever had a trial on the merits even before the System Board.

This matter was then appealed to the United States Court of Appeals, 5th Circuit, which resulted in the opinion of January 13, 1960, now sought to be reviewed by certiorari in this Court.

In this opinion, the United States Court of Appeals, 5th Circuit, held that the proceedings in the court above referred to, resulting in the opinion in *250 F.2d 86*, was *res judicata* on all of the issues presented, and that even though all of the issues were not settled, yet they were presented for decision, and all of them could have been specifically settled in that case.

This Court will notice that the opinion did not say they were settled, but that under some strange doctrine of *res judicata*, they could have been or should have been settled.

Thus we have, in summary, this factual situation:

An air line captain employed by Eastern Air Lines, Inc., was represented by the Air Line Pilots Association and was bound by the terms of the bargaining agreement. He had no choice. All parties under that Air Line Pilots Association and members thereof were bound by the same terms and conditions. The Company could not make a special employment or special contract.

Captain Woolley had been admittedly working for six years under that contract, that is to say, from the last of July, 1950, up until his discharge in February, 1956. He was not discharged under any procedure or for any grounds under that contract, but Eastern Air Lines contended he was a special employee; that he was not protected by the provisions of the Federal law on the subject; that they had a right to contract with him separate and apart from the terms of the bargaining agreement.

Apparently it was contended that while Woolley was bound by all of the terms and conditions of that agreement, yet the Company was not. It was contended by the Company that it had a right to take an anticipatory resignation from a pilot employee, otherwise covered in the contract, and that he could be fired and his employment severed, and that he was not entitled to the protection of the bargaining contract in that procedure.

So we have a situation where, on the one hand, the pilot was bound, but the Company was not.

If Woolley was discharged by reason of the breach of a separate contract which had been dated in July, 1950, giving the Company the right with or without cause to accept the resignation, then that created one cause of action. If that is the contention of Eastern Air Lines, then cer-

tainly that point has never been tested by any proper court.

If, on the other hand, it is contended by the Company that Woolley is blocked from suing for wrongful discharge because of the action of the Adjustment Board, then where was the power of the Adjustment Board to pass upon this issue, when admittedly the ground for accepting the resignation was by separate contract which was in derogation of the collective bargaining agreement.

We find ourselves in a position where the Company claimed the discharge privileges of a separate outside and illegal contract, and yet at the same time claimed the benefit of a wholly void order by the Adjustment Board created only under the limited provisions of the bargaining agreement.

We say that the law of the United States as settled by this Court clearly prohibits such an interpretation, and Woolley has been deprived of his due process of law under these fictitious and irrelevant proceedings, and by the improper extension of the protective arm of the United States Courts, both for the Southern District of Florida and the United States Court of Appeals for the 5th Circuit.

At the outset, we wish to call this Court's attention to its late decision of *Union Pacific Railroad* v. *Price*, 360 U.S. 601, 3 L. Ed. 2d 1460, 79 S. Ct. 1351, decided June 29, 1959. The question involved in this case was whether a trainman could sue in a Federal Court for damages for his allegedly wrongful dismissal after he had been unsuccessful before the National Railroad Adjustment Board. The District Court for the District of Nevada granted a summary judgment for the Railroad. On appeal to the United States Court of Appeals, 9th Circuit (255 F.2d 653), that Court held that where the Board, in entering its award

denying the claim, neither found nor concluded that the Railroad was entitled to discharge the plaintiff, the plaintiff did not obtain an adjudication upon the merits in the proceedings before the Board. That Court held the trial court therefore had jurisdiction to entertain independent action by the plaintiff for damages, notwithstanding the proceedings before the Board.

This case was under the National Railroad Adjustment Board, which is constituted on a far different basis, and has more of a final judiciary function than we find in the Air Line Adjustment Boards.

It was also pointed out in the *Union Pacific* case that the law of Nevada did not require any claimant to exhaust his administrative remedies before resorting to courts. The Florida law, of course, is to the contrary, which we will hereinafter point out in our discussion of the case of *Sigfred* v. *Pan American World Airways*, 5th Circuit, 230 F.2d 13.

In that case, the United States Court of Appeals, 5th Circuit, recognized that the Florida law generally required the claimant to exhaust his administrative remedies before resorting to court action, but that court avoided the effect of that law for other Federal reasons.

When the Railroad then brought this question to this Court by certiorari, styled *Union Pacific Railroad* v. *Price*, *supra*, this Court granted certiorari, stating (79 S. Ct. 1354):

> "We granted certiorari to decide the important question raised by the case of the interpretation of the Railway Labor Act. 358 U.S. 892, 79 S. Ct. 155, 3 L. Ed. 2d 119."

However, this Court reversed the final holding of the United States Court of Appeals for the 9th Circuit because

of the scope of the language of the acts which created the National Labor Adjustment Board. At page *1355 of 79 S. Ct.*, it was said (360 U.S. 608):

> "Congress has said in Sec. 3 First (m) of the Railway Labor Act that the Adjustment Board's 'awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award.' * * * Thus, the plain language of Sec. 3 First (m), on its face, imports that Congress intended that the Board's disposition of a grievance should preclude a subsequent court action by the losing party."

This Court in its opinion pointed out that in the first Acts of Congress, particularly in the 1926 Act, there was no machinery set up and no requirement set up for a definite submission of these disputes of even the railway employees, and under that act, any proceedings before the Contractual Board would be in the nature of mere arbitration proceedings and would not be binding or conclusive so as to prevent court trial of the issues.

This Court in its opinion then set forth the record of the actions under the 1926 Act which resulted in the Act of 1934, or rather the amendment of 1934, in which Congress for the first time created the National Railroad Adjustment Board, and in that amendment Congress itself provided that the awards made by the National Railroad Adjustment Board would be final except insofar as they contained a money award. No such statutory provisions have been created with reference to air line employees.

This difference was first noted by the District Court of Appeal of Florida, Third District, in the case of *National Air Lines, Inc., Appellant,* v. *Paul I. Metcalf, Jr., Appellee,* 114 So.2d 229. Opinion rendered August 13, 1959, and in general this Appellate Court of Florida held (headnote 7)

"Where airline and union entered into collective bargaining agreement providing for a System Board of Adjustment to arbitrate all disputes with award of such Board to be final and binding, claims that Board exceeded jurisdiction by considering issues not submitted and that award was so arbitrary and capricious as to deny procedural due process were subject to judicial review."

"8. Although collective bargaining agreement between airline and union provided for arbitration of grievances pursuant to federal law, complaint seeking declaratory relief with respect to rights of parties under arbitration award did not present a federal question and hence state court had jurisdiction."

"9. Right created by federal statute does not require exercise of federal jurisdiction in all litigation arising therefrom, and if litigation concerns only private rights between parties and not a construction of Constitution or any federal statute, state court is proper forum."

In the body of that opinion (231), the Florida Court pointed out that the Congress had by its amendments of 1934, established a National Railroad Adjustment Board to hear disputes between railroad employers and employees, with an optional provision authorizing the creation of system, group or regional boards. The Court said (231):

"The Act was amended to include carriers by air (see 45 U.S.C., U.S.C.A., Secs. 181-188). The provisions of the Railway Labor Act, as found in Secs. 151, 152 and 154-163, were extended to air carriers by Sec. 181 of the Act. Section 184 required the air carriers and their employees to establish a board of adjustment with jurisdiction not exceeding the jurisdiction which would lawfully be exercised by a system, group or regional board of adjustment under the authority of Sec. 153 Second. Although the jurisdictional limits of Sec. 153 Second are adopted by reference in Sec. 184, it be-

comes apparent that it was the congressional intent to exclude the provisions of Sec. 153 First from application to air carriers as these provisions applied in a unique manner to railroads only. Section 185 provides for the creation of the National Air Transport Adjustment Board when such shall be deemed necessary by the National Mediation Board. This contingency has never arisen, thus the air industry at the present time has only an administrative agency to hear employer-employee disputes created by contract between each carrier and the bargaining agency for the employees. Insofar as the Railway Labor Act applies to the airlines, there is no procedure set forth for judicial review or enforcement of awards from these system boards of adjustment. To summarize, the railroad industry has a federal agency which hears all employer-employee disputes with a specific method of procedure and a limited judicial review, while the air industry has only the system boards created by contract on the local level with no prescribed procedure for judicial review."

The Court then pointed out (232):

"In the absence of any specific grant of jurisdiction to the federal courts to enforce awards of the airlines system boards of adjustment, it would appear that the federal courts lack such jurisdiction.

* * *

* * * The contract under which the System Board of Adjustment was created provided that 'decisions of the Board in all cases properly referable to it shall be final and binding upon the parties hereto.' Accordingly, neither the federal courts nor the state courts would be authorized in re-trying the merits of the controversy. However, the agreement to arbitrate these disputes and be bound by the award does not preclude a review of procedural due process and jurisdictional limitations. In Farris v. Alaska Airlines, D.C., 113 F. Supp. 907, 908. * * *.

* * *

The claims that the Board exceeded its jurisdiction by considering issues not submitted and that the award is so arbitrary and capricious as to deny procedural due process would, we think, be subject to review. Courts have universally examined arbitration awards for these defects despite any requirements of finality. Cf. Fla. Stat., F.S.A., Sec. 57.22. See Sturges, Commercial Arbitrations and Awards, Secs. 361, 367."

A similar case was presented simultaneously in the United States District Court, Southern District of Florida, also brought by *Paul I. Metcalf, Jr. v. National Airlines, Inc.*, and in that case the United States District Court, Southern District of Florida, Miami Division, entered a judgment dismissing the claim of Paul I. Metcalf seeking to enforce an award of the System Adjustment Board. This judgment was appealed to the United States Court of Appeals, 5th Circuit, cause number 17773, and the decision was rendered by that Court on December 1, 1959, 271 F.2d 817.

In the body of the opinion, the United States Court of Appeals for the 5th Circuit, in upholding the decision of the lower court, for the first time in any appellate Federal Court, pointed out the same defect or the same difference between the Railroad Adjustment Board and the Airline Boards which had been recognized and set out so clearly in the Florida Appellate Court opinion above referred to, and definitely found that there was a vast difference between the finality of the law and the procedure set up by Congress for the National Railway Labor Act applying to various employees, and that which was applicable to air carriers and their employees. In the body of the opinion the Court made this statement:

"Congress made even more clear that it was not elevating to the same rank the status of an award by such *system* board in the airline industry as was

granted to an award of the National Railway Labor Adjustment Board by then providing in Section 185 for the future creation of a similar National Board for the air industry when in the judgment of the National Mediation Board 'it shall be necessary to have a permanent national board of adjustment.'"

The Court pointed out that if the National Mediation Board ever set up that machinery, then the legislative scheme would be complete, and said:

"Thus, the legislative scheme is complete. All the provisions of the Railway Labor Act are adopted for the air industry except section 153; instead of giving similar relief to 153, special provision is made for adjustment of labor disputes by system or regional boards with no legislative determination as to their finality or as to their being the basis of federal suit jurisdiction; but all of the provisions of Section 153 are brought into play, including the right granted in subsection (p) to sue on an award in the federal district court, when and if the National Mediation Board exercises the judgment granted it in Section 185.

Both parties here agree that this precise question has not heretofore been passed upon by the United States Courts."

Then the Court, in conclusion, said:

"The argument made by appellant that the statute must be construed so as to give the district court jurisdiction because otherwise he is without a remedy to enforce a federally enacted right is, of course, without foundation. The state courts have full and complete jurisdiction to grant relief on such an alleged contractual right. There is nothing unusual in a holding that the state courts apply the federal law just as do the federal courts if the cause is one as to which federal law controls. The Florida District Court of Appeals (Third District) has already decided, in a declaratory

judgment suit arising out of this same award, that the Florida state court had jurisdiction to entertain the suit. *National Airlines, Inc.* v. *Metcalf*, 114 So.2d 229. We think the decision of that court accepting jurisdiction of the cause is correct."

If we apply the doctrine of this opinion accepting and approving, as it does, the decision of the Florida Appellate Court, then certainly the suit by Paul S. Woolley for damages for wrongful breach of the contract was properly filed in the State Court, and when the cause was transferred or removed to the Federal Court, it was only on the usual ground of diversity of citizenship, the plaintiff being a Florida citizen and Eastern Air Lines being a foreign corporation, resident of another state.

On a removal case of this type, the Florida law should have been applied, rather than any peculiar jurisdiction which may have been created under the Acts of Congress, or where there was a construction of either the Federal Constitution or any construction of the Federal Railway Labor Act.

It is therefore apparent that the opinion of the United States Court of Appeals for the 5th Circuit in the *Metcalf* case is directly contrary to its so-called application of the law in this case, and it appears that the Federal Courts have never had the jurisdiction to uphold the finality of the Eastern Air Lines System Board of Adjustment or to construe the finality of the award made by that Board in the Woolley case. That was a matter which had to be determined only in a suit by Woolley for breach of the contract, and the proceedings in the previous Woolley cases could not be *res judicata* when the only effect of that opinion was that the Federal Courts had no right to review the actions of the contractual Board of Adjustment or to enforce or correct that contract.

Thus we have a situation where, under the Florida law, this contractual Board is nothing more or less than an Arbitration Board, and its findings are not made final by any Act of Congress or by any act of the State of Florida. To the contrary, the Florida Statute referred to, Section 57.22, was and is directly applicable. This statute gives the Court the right to review any arbitration award upon the application of either of the parties, and names certain grounds, as follows:

"(a) The award was procured by corruption, fraud or other undue means;

(b) There was evident partiality by an arbitrator appointed as a neutral or cofruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party;

(c) The arbitrators or the umpire in the course of his jurisdiction exceeded their powers;

* * *

(e) There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under Sec. 57.12 and unless the party participated in the arbitration hearing without raising the objection."

Other procedures are set forth in that act.

It is therefore apparent under the decision of the *Metcalf* case, both in the State Court and in the United States Court of Appeals, 5th Circuit, that under this Florida law some court had the right to review the findings of this contractual Board of Adjustment, when it assumed powers of attempting to construe conditions and matters and things not even covered in the bargaining contract. That contractual System Board of Adjustment admittedly could only adjudicate as arbitrators issues which they were

empowered to hear and determine. So far in the proceedings in the *Woolley* cases, there has been no claim by the Air Line Company and no finding by any of the Federal Courts, that a resignation given in 1950 as a preliminary to employment or reinstatement of an airline captain, would be valid and binding upon the Company or the employee where those same or similar provisions or conditions were not included as a part of the collective bargaining agreement.

The cases throughout the United States, both State and Federal, have been consistent in holding that such contracts are void and against public policy. Surely, if Captain Woolley had been given a contract for additional compensation over and above that provided for in the general collective bargaining agreement, and then after he took employment under the collective bargaining agreement under the National Railway Labor Act, he attempted to enforce that special contract, he would certainly have met with an adverse ruling.

Now, however, the Air Line claims that it had a special right under that 6-year old offer of resignation. There is substantial fundamental wrong in such a condition or conclusion, and yet that is where petitioner, Paul S. Woolley, now finds himself. He is now completely barred from any right to have a court review the finding of the Adjustment Board by the claim of *res judicata* and by the action of a court which did not have jurisdiction in the first place. He is not now trying to enforce his contract of employment or to continue as an employee of the company, but he is simply seeking relief in the State Court under the State law to determine whether there was a wrongful breach of the collective bargaining agreement which was a third party contract for his benefit.

Assuming that a mere conflict in the opinions of the United States Court of Appeals for the 5th Circuit, or a conflict between its opinions and those of the Appellate Court of Florida, would not necessarily and of itself give this Court jurisdiction to grant certiorari and to review the judgment, yet it is our contention that the decisions of this Court are so clear that it is apparent that the final decision of the United States Court of Appeals now sought to be reviewed, is contrary to these decisions.

We think the question was settled by this Court in the case of *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U.S. 653, 73 S. Ct. 906 (1953 decision). This case involved an employee of the Transcontinental & Western Air, Inc., a Delaware corporation, which company was a carrier by air, subject to the Railway Labor Act. The terms of the employee's employment contract were stated in the written collective bargaining agreement between the said Company and the International Association of Machinists. Koppal was suspended from employment on a charge of abuse of sick leave provisions of his contract, and he was granted a hearing before the Grievance Board. The facts were further analyzed in the opinion by this Court (73 S. Ct. 907):

> "He attended the hearing, which was held before a representative of petitioner other than the one bringing the complaint. At its conclusion, the hearing officer stated that there had been a severe abuse of the sick-pay policy and that respondent would be discharged. In view of respondent's past favorable record, the hearing officer asked him whether he would prefer to resign and advised him that he could appeal even if he resigned.
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> Respondent resigned, stating that he did so 'under protest.' He took no appeal under his employment contract but, June 30, 1950, instituted the present pro-

ceeding in the United States District Court for the Western District of Missouri, claiming diversity of citizenship and seeking $7,500 compensatory and $15,000 punitive damages."

It appears from the opinion that the jury returned a verdict for $7,500, and that the lower court set the verdict aside and dismissed the complaint on the ground that respondent had failed to appeal the original decision of the hearing officer, and had otherwise failed to exhaust the remedies prescribed in his employment contract. The Court of Appeals, with one Judge dissenting, reversed that judgment and remanded the case for further proceeding (8th Cir., 199 F.2d 117). This Court said (907):

> "Because of differing opinions expressed as to the effect of our decisions in Moore v. Illinois Central R. Co., 312 U.S. 630, 61 S. St. 754, 85 L. Ed. 1089, and Slocum v. Delaware, L. & W. R. Co., 339 U.S. 239, 70 S. Ct. 577, 94 L. Ed. 795, and due to the importance of the case in relation to the Railway Labor Act, we granted certiorari. 344 U.S. 933, 73 S. Ct. 504."

The Court then said (908):

> "The jurisdiction of the District Court rested upon diversity of citizenship and an adequate amount in controversy. The complaint sought judgment for damages resulting from the alleged unlawful discharge of respondent in violation of a contract of employment made in Missouri, to be performed in Missouri and agreed by the parties to be a 'Missouri contract.' Accordingly, if the Railway Labor Act were not involved, there would be no question but that the substantive law of Missouri should determine the requirements of the cause of action, the interpretation of the contract and the measure of damages to be applied.
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> No decision of the Supreme Court of Missouri has been cited on the point but the law of Missouri has

been shown, by the following cases, to be that an employee must exhaust the administrative remedies under his contract of employment in order to sustain his cause of action in such a case."

Then this Court, in analyzing several of the Missouri decisions, concluded by stating (909):

"Under the law of Missouri, as shown above, respondent was required to show exhaustion of administrative remedies under his employment contract in order to sustain his cause of action. As he did not do so, the District Court's dismissal of his complaint was justified, unless the fact that petitioner was a carrier subject to the Railway Labor Act or the fact that the employment contract was drafted pursuant to that Act should make a difference."

The Court then continued (909-910):

"The important point is that while the employment contract conforms to the Act provides a procedure for handling policy of the Railway Labor Act and the grievances so as to avoid litigation and interruptions of service. the Act does not deprive an employee of his right to sue his employer for an unlawful discharge if the employee chooses to do so.

'We find nothing in that (Railway Labor) Act which purports to take away from the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an adminstrative finding a prerequisite to filing a suit in court. * * * The District Court and the Circuit Court of Appeals properly decided that petitioner was not required by the Railway Labor Act to seek adjustment of his controversy with the railroad as a prerequisite to suit for wrongful discharge.

* * *

We amplified the foregoing statement in Slocum v. Delaware, L. & W. R. Co., 339 U.S. 239, 244, 70 S. Ct. 577, 580, 94 L. Ed. 795, as follows:

'Moore (in 312 U.S. 630, 61 S. Ct. 754, 85 L. Ed. 1089) was discharged by the railroad. He could have challenged the validity of his discharge before the Board, seeking reinstatement and back pay. Instead he chose to accept the railroad's action in discharging him as final, thereby ceasing to be an employee, and brought suit claiming damages for breach of contract. As we there held, the Railway Labor Act does not bar courts from adjudicating such cases. A common-law or statutory action for wrongful discharge differs from any remedy which the Board has power to provide; and does not involve questions of future relations between the railroad and its other employees. If a court in handling such a case must consider some provision of a collective-bargaining agreement, its interpretation would of course have no binding effect on future interpretations by the Board.'"

The ultimate decision of the Court was to the effect that this air carrier employee did not fully exhaust his administrative remedy under his bargaining contract because he only went through the first step of the administrative remedy, and that that was not a complete exhaustion of his administrative remedy.

On the other hand, if he even went to the Adjustment Board, or exercise any step in that procedure, under some of the other decisions by the Federal Courts, particularly if he was a railroad employee, he would be barred from any further procedure. If we construe the statement by this Court which we have above quoted and reiterate:

"A common-law or statutory action for wrongful discharge differs from any remedy which the Board has power to provide, and does not involve questions of future relations between the railroad and its other employees",

as being the fundamental law, then Woolley could not have exhausted his remedies because admittedly under the Florida law any claimant must exhaust his administrative remedies before resorting to court action.

The Florida law was very properly analyzed in the decision by the United States Court of Appeals, 5th Circuit, in the case of *Sigfred* v. *Pan American World Airways*, 230 F.2d 13. In that case, Sigfred, a captain pilot with Pan American World Airways, Inc., was discharged because of an ear injury. He filed a suit in the Florida State Court asking for determination of his rights under the collective bargaining agreement. Pan American World Airways, Inc., being incorporated in a state other than Florida, removed the case to the Federal District Court, and that Court declined jurisdiction and dismissed the complaint without prejudice until the plaintiff could exhaust his administrative remedies in the Railway Labor Act or elect to pursue his statutory or common law remedy for breach of contract for wrongful discharge.

Sigfred then filed his claim for workmen's compensation with the Florida Industrial Commission and obtained an award to the effect that his disablement was the result of occupational injury. Then, having established this right he demanded full payment from the Company, and the Company denied liability beyond the workmen's compensation award, and Sigfred then, pursuant to the original opinion of the District Court of the United States, exhausted his appeal to the Pilot System Board of Adjustment, which disallowed the claim.

Sigfred then brought suit in the United States District Court, challenging the Board's construction of the collective bargaining agreement and seeking damages. The District Court dismissed the complaint on the ground that

the Board's interpretation of the contract was correct, and he, Sigfred, took the appeal.

Then the Pan American World Airways for the first time in the Appellate Court urged that since the plaintiff had elected to pursue the administrative route through the System Board, that was a final and binding determination. They had taken exactly the opposite position the first time when they objected to Sigfred's action because he had not exhausted his administrative remedy. Sigfred contended that his election to pursue his remedy to the Pilots System Board of Adjustment was not voluntary, but pursuant to the Florida law; that the Florida law governed the reviewability of the Board's award; that under the Florida rule of reviewability of arbitration awards, all pure questions of law may be re-examined by the reviewing court, and that a review of the Board's interpretation would reveal it to be erroneous.

The Court evaded the issue as to whether the Florida law actually required Sigfred to exhaust his administrative remedies, and referred to the decisions of the Supreme Court of Florida, among them the case of *Glens Falls Ins. Co.* v. *Gulf Breeze Cottages*, 38 So.2d 574. The Court resolved the case by stating that it did not make any difference what the Florida law was on the subject; that it thought it was purely a matter of Federal construction, and said that if Florida had such a law or rule as that contended for, the Federal Courts would not recognize it.

This opinion was a two to one decision, and the majority opinion, which was issued in 1956, did not even mention or discuss the opinion of this Court in *Transcontinental & Western Air* v. *Koppal*, *supra*, nor did the majority opinion point out the difference between the Federal cases applicable to the railroad employees, and

the case which would be applicable to an air carrier employee. This distinction was not recognized by the United States Court of Appeals, 5th Circuit, until its opinion in December, 1959.

In the dissenting opinion written by Judge Brown, the *Transcontinental* case was discussed and it was pointed out, and we quote from 230 F.2d 13, 25:

> "Since Sigfred was required, either by Florida law, or by reason of an authoritative decision which Pan American is not now free to question applying Florida law, to pursue his remedy through the System Adjustment Board, it is evident that, in assaying its impact upon his rights, the so-called 'election' was not voluntary, that is, one resulting from his free choice. But as I view it, this coercive characteristic need not alone be decisive here.
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> If, as Koppal holds, the Railway Labor Act does not pull a Moore case out of Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, to determine suability, I think it likewise follows that the state law will also determine the scope and force of the mandated administrative action. Florida law declares that, unless the proceeding is a Florida statutory arbitration, a party to an arbitration proceeding may have an unlimited right of court review on asserted errors of law. Glens Falls Ins. Co. v. Gulf Breeze Cottages, Inc., Fla., 38 So.2d 828. See Steinhardt v. Consolidated Grocery Co., 80 Fla. 531, 86 So. 431; Hanover Fire Ins. Co. v. Lewis, 28 Fla. 209, 10 So. 297.
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> Indeed, so strong is this Florida policy against ousting the courts of jurisdiction, that even assuming the pursuit of the administrative remedy was, in a legal sense, voluntary, the Florida courts would still be open for review of errors of law."

In addition to the cases above mentioned, Judge Brown in his opinion also quoted many other Florida decisions, some of which are:

Ervin v. *City of North Miami Beach*, 66 So.2d 235.
DeCarlo v. *Town of West Miami*, 49 So.2d 596.
Morrison v. *Plotkin*, 77 So.2d 254.

We respectfully say that the opinion now sought to be reviewed is directly contrary to the decision of this Court of *Transcontinental & Western Air* v. *Koppal, supra.*

This Court took jurisdiction of a similar issue where a railroad employee was involved. The basis for its holding in that case—*Price* v. *Union Pacific Railroad*—was founded solely upon the fact that the railroad employees were covered by a completed legislative enactment.

Now, what is the law, assuming that a similar situation is presented, affecting an airline employee? This case is a matter of great public importance. There is admitted utter confusion in the opinions of the Federal Courts below the level of this Court. The Judges of the same Courts are in conflict. The United States Court of Appeals for the 5th Circuit has been so confused that it adopted an entirely inconsistent rule in the case of *Woodward Iron Company* v. *Ware*, 261 F.2d 138, in which a Union member under a collective agreement was discharged, and pursued his remedy through the Administration Board. One of his associates was also discharged, but he did not pursue his administrative remedy. The Court upheld the right of both employees to sue for breach of contract under the Alabama law for damages for unlawful discharge.

There is utter inconsistency in the application of these principles of law under these collective bargaining agreements which can only be determined if this Court will, in

the exercise of its broad jurisdictional powers, grant certiorari and review this case.

Respectfully submitted,

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